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Letter Ruling 94-9: Sales Tax Exemption for a Product that Enhances Pesticides and Fertilizers

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December 30, 1994

You request a ruling determining whether the Massachusetts sales tax under G.L. c. 64H applies to the sale of *****, a chemical product that is used in conjunction with pesticides or fertilizers (hereafter called the Product).

Facts

The Product is a surfactant (that is, a surface-active substance) for use in water-based pesticide formulations. It is described as "a nonionic wetter/spreader/penetrant surfactant" that allows the use of the lowest labeled pesticide rate at the lowest recommended surfactant level. The Product is used as in conjunction with pesticides (such as herbicides, fungicides, and insecticides), and with liquid fertilizers to provide increased coverage, rain fastness and foliar uptake. Thus, it increases the effectiveness of certain pesticides and fertilizers and allows a lower amount of those pesticides or fertilizers to be used for the desired result.

The Product has other uses: as a soil wetting agent (for localized dry spots, for irrigation, for deep root watering and for mulch, peat or potting soil) to provide more effective penetration of water to the soil; and as a dew control agent (to prevent dew formation on turf areas, such as golf fairways and sports fields).

Ruling

For the reasons discussed below, we rule that the sale of the Product, a surfactant that is used in conjunction with pesticides or fertilizers, is exempt from Massachusetts sales tax under G.L. c. 64H, § 6(p)(3).

Discussion of law

Massachusetts imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts by any vendor, unless an exemption applies. G.L. c. 64H, § 2. In Massachusetts an exemption applies to "sales of fertilizer, including ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use (emphasis added)." G.L. c. 64H, §

6(p)(3).

The Department has addressed the issue of the sales tax exemption for sales of pesticides in two letter rulings, LRs 81-34 and 82-55. Both concluded that certain pesticides were exempt from tax. The exemption under G.L. c. 64H, § 6(p)(3), includes not only the expressly listed exempt items such as pesticides or fertilizers, but also other items that are "commonly regarded in the same category and for the same use." Under the facts presented to us in this case, the Product is used with pesticides or fertilizers, increasing their effectiveness and decreasing the amount of pesticides or fertilizers needed. To the extent that it is used as a soil wetting agent, it also enhances plant growth. Thus, the Product satisfies the conditions set forth in the statute in that it may be regarded as in the same category and for the same use as fertilizers or pesticides.

Conclusion

We conclude that under the facts presented in this case, the Product, which is not a pesticide or fertilizer, is exempt from Massachusetts sales tax under G.L. c. 64H, § 6(p)(3), because it is used with and increases the effectiveness of pesticides or fertilizers, and so is commonly regarded as in the "same category and for the same use" as pesticides or fertilizers within the meaning of the statute.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

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